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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,888	12/22/2000	David John Tyrrell	16,497	9433

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KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH, WI 54956

[REDACTED] EXAMINER

WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 11/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/746,888	TYRRELL ET AL.
	Examiner	Art Unit
	Jamisue A. Webb	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 26 June 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-57 is/are pending in the application.

4a) Of the above claim(s) 8,9,35,36,42,44 and 48 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-7,10-34,37-41,43,45-47 and 49-57 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>10,14,16</u> .	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-7, 10-13, 16-20, 40, 41, 43, 45-47, 49, 50, and 52-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik et al. (6,149,934) in view of Klofta et al. (6,238,682).

4. With respect to Claims 1, 2, 20, 22-25, 40, 41, 53, and 55-57: Krzysik discloses the use of an absorbent article (20) with a topsheet, backsheet and core located there between (See Figure 1). Krzysik discloses the use of a lotioned topsheet to where the lotion composition is melted, applied to the topsheet and then cooled (column 13, line 64 to column 14, line 3). Krzysik discloses the use of a lotion composition on the topsheet that is melting temperature between 30-100 degrees Celsius (column 12, lines 31-34), a low sheer viscosity between 50000-80000 cP, a

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high sheet viscosity of 150-200 cP (column 12, lines 42-60), a penetration hardness between 5-360 mm (column 12, lines 66-67) disposed on the topsheet from 1-50 gsm (column 13, lines 44-49). Krzysik however does nor disclose a lotion composition with a hydrophilic solvent, a high molecular weight polyethylene glycol, a fatty acid, a fatty alcohol and an extracted botanical active.

5. Klofta discloses a lotion composition with a 5-60% hydrophilic solvent (column 5, lines 6-8), a high molecular weight polyethylene glycol (column 10, line9-10), 0.1-60% skin conditioning agent, such as fatty alcohols and fatty acids (column 18, line 10 to column 19, line 24), and a botanical active from 0.1-6% (column 16, lines 31-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition of Krzysik to be the composition of Klofta, in order to provide a lotion composition that kills viruses and imparts a soft lubricious feel. (see Klofta, abstract).

6. With respect to Claims 3 and 45: See Klofta, column 17, lines 13-42.
7. With respect to Claims 4, 5 and 46: See Klofta, column 17, lines 23-35.
8. With respect to Claims 6 and 47: See Klofta, column 24, lines 11-14.
9. With respect to Claim 7: See Klofta column 16, lines 31-42.
10. With respect to Claims 10, 11, and 49: Klofta discloses the use of a surfactant with an HLB value of greater than 7 (column 21, lines 12-14), but fails to disclose the use of glycerol stearate, polysorbate or water dispersible metal salts. It would have been an obvious matter of design choice to have the surfactant be either stearate, polysorbate or a water dispersible metal salt, since it has not been disclosed that the use of either stearate, polysorbate or a water dispersible metal salt solves any stated problem or is for any particular purpose and it appears that the invention would work equally as well with the surfactants of Klofta.

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11. With respect to Claims 12, 13, 50: See Klofta column 27, lines 30-37.
12. With respect to Claims 16,17, and 52: See Klofta column 18, line 10-12.
13. With respect to Claims 18, 19, and 53: See Klofta column 24, lines 30-40.
14. With respect to Claim 43: See Krzysik column 13, line 59.

15. Claims 14, 15, 21-39, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik in view of Klofta as applied to Claims 1 and 40 above, and further in view of Kropf et al. (6,316,030).
16. With respect to Claim 14, 15, 21, 39 and 51: Krzysik and Klofta, as disclosed above for Claim 1, fails to disclose the composition comprising a sterol. Kropf discloses the use of a composition that contains an effective amount, 0.1-5% sterol (see abstract and column 3, line 35-32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition of Krzysik and Klofta, to include the sterol of Kropf, in order to provide a caring and protective effect and increase skin moisture level (see Kropf column 1).
17. With respect to Claim 32: See Kropf column 2, lines 5-38.
18. With respect to Claim 26: See Klofta, column 17, lines 13-42.
19. With respect to Claims 27 and 28: See Klofta, column 17, lines 23-35.
20. With respect to Claim 29: See Klofta, column 24, lines 11-14.
21. With respect to Claim 34: See Klofta column 16, lines 31-42.
22. With respect to Claim 30: Klofta discloses the use of a surfactant with an HLB value of greater than 7 (column 21, lines 12-14), but fails to disclose the use of glycerol stearate, polysorbate or water dispersible metal salts. It would have been an obvious matter of design

choice to have the surfactant be either stearate, polysorbate or a water dispersible metal salt, since it has not been disclosed that the use of either stearate, polysorbate or a water dispersible metal salt solves any stated problem or is for any particular purpose and it appears that the invention would work equally as well with the surfactants of Klofta.

23. With respect to Claim 31: See Klofta column 27, lines 30-37.
24. With respect to Claim 33: See Klofta column 18, line 10-12.
25. With respect to Claims 37 and 38: See Klofta column 24, lines 30-40.

Response to Arguments

1. Applicant's arguments filed 6/26/02 have been fully considered but they are not persuasive.
2. The applicant has argued that the examiner has not identified why one of ordinary skill in the art would have been motivated to combine the disclosures of the Krzysik, Klofta and Beerse patents. With respect to applicant's arguments that one of ordinary skill in the art would not be motivated to combine disclosures of a diaper and tissue papers: Krzysik discloses the use of lotion on a topsheet, and Klofta discloses a lotion that is to mitigate the potential for skin irritation, Krysik discloses to improve skin health, therefore one of ordinary skill in the art would have motivation to combine the two. With respect to applicant's arguments that it would be highly undesirable to use an antiviral/antibacterial composition to improve the skin health due to the fact that such compositions would kill the natural occurring, beneficial flora that is used to protect the skin: It is well known, and demonstrated, in the art that antibacterial material is used on the topsheet or in contact with user's skin in diapers and other absorbent articles, in fact there is a whole subclass (360) in class 604 devoted to it. Roe et al. (6,093,869) discloses a topsheet

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that is treated with an anti0bacterial agent (column 7, lines 33-57), Gross (6,031,147) discloses that a deodorizing composition with antibacterial agents is known in the art (column 1, lines 31-36), and Johnson (H1732) discloses anti-bacterial agents used on the topsheet and in close proximity to the skin (abstract).

3. With respect to Applicant's arguments that Krysik does not disclose the claimed low or high sheer viscosity ranges: Krysik discloses low and high viscosity ranges which overlap with the claimed ranges of the invention, therefore Krysik discloses values which are in the claimed range, therefore disclosing the claimed invention.

4. With respect to Applicant's arguments that it would not have been obvious to combine Kropf with Krysik and Klofta, due to the fact that Fropf is being used for cosmetics and pharmaceutical preparations: Kropf discloses the pharmaceutical preparations being compositions useful in skin care. Krysik and Klofta disclose a skin care composition, therefore One of ordinary skill in the art, when modifying the skin care composition of Krysik and Klofta, would look at other skin care compositions, which would include pharmaceutical preparations, therefore it is the examiner's position that there would be motivation to combine Kropf with Krysik and Klofta.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on (703)308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw 
September 26, 2002



DENNIS RUHL
PRIMARY EXAMINER